

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
High-Cost Universal Service Support)	WC Docket No. 05-337
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
_____)	

COMMENTS OF NEX-TECH, INC.

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SUMMARY

Nex-Tech and other landline competitive eligible telecommunications carriers (“CETCs”) provide service to their customers using similar network infrastructure and incur similar, if not greater, costs as the incumbent local exchange carriers (“ILECs”) against whom they compete. Indeed, Nex-Tech has made significant capital expenditures in order to overbuild the infrastructure in the communities it serves. Like the provider of last resort (“POLR”) responsibilities of the ILECs, landline CETCs are required by Section 214(e) of the Communications Act (“Act”) to provide service throughout their service areas. However, despite their similar operations, costs, and service obligations, the Joint-Board’s *Recommended Decision* does not provide landline CETCs with explicit and sufficient universal service fund (“USF”) support because ILECs are provided support through the POLR Fund, while CETCs are not.

There is no justification for discriminating against landline CETCs in the manner proposed by the Joint-Board and the Commission. As confirmed by the Fifth Circuit, the Act requires the FCC to ensure that both universal service and local competition are realized. The *Recommended Decision* and *Identical Support Rulemaking NPRM* contravene those requirements by providing an unfair advantage to ILECs through USF support not provided to landline CETCs. To remedy this shortcoming, Nex-Tech proposes that the Commission permit landline CETCs to receive USF support from the POLR Fund to the same extent as ILECs, and that landline CETCs receive support based on their actual costs. Nex-Tech further urges the Commission to re-designate the POLR Fund as the “Landline Fund” to reflect that the purpose of this fund is to support all landline companies, not just ILECs. This would ensure that local

competition is preserved by providing a level playing field to all rural LECs competing in the same region.

It is important to note that although both landline and wireless CETCs are currently excluded from participating in the POLR Fund, only wireless CETCs are provided with post-transition USF support by way of the Mobility Fund. No comparable dedicated fund is proposed for landline CETCs in the *Recommended Decision*. Such disparate treatment for similarly situated carriers does not meet the requirement set forth by Congress in the Act to ensure that the USF support mechanism does not adversely impact competition by disadvantaging landline CETCs.

It is Nex-Tech's experience that ILECs defined as non-rural carriers in the Act are generally not interested in providing advanced telecommunications services in small rural towns. They will do so begrudgingly only if required to provide advanced services, such as broadband Internet access, by the applicable state public service commission or if faced with a competitor that has the appropriate resources to provide better and higher quality service than the ILEC. Nex-Tech's proposal would ensure that the reforms proposed by the Commission and the Joint Board would provide a competitive and level playing field and provide sufficient cost-based USF support in extremely low density or sparsely populated areas.

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Nex-Tech, Inc. (“Nex-Tech”), by its undersigned attorneys, submits its comments in the above-referenced proceedings in response to the Commission’s Notices of Proposed Rulemaking (“NPRM”) seeking comment on ways to reform the high-cost universal service program. Nex-Tech primarily responds to the FCC’s NPRM¹ regarding the Federal-State Joint Board on Universal Service (“Joint Board”) recommendations² (“*Recommended Decision*”) for comprehensive high-cost universal service support. Nex-Tech also provides comments relevant to the FCC’s *Identical Support Rulemaking NPRM*³ with regard to the universal service fund (“USF”) support to be provided to competitive eligible telecommunications carriers (“CETCs”).

As further detailed below, Nex-Tech submits that rural landline CETCs should be permitted to participate in the Provider of Last Resort (“POLR”) Fund proposed by the Joint Board’s *Recommended Decision* because rural landline CETCs are obligated to provide service throughout the areas they service, and they incur similar, if not greater, costs and provide service using similar infrastructure as incumbent local exchange carriers (“ILECs”). Because the

¹ *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Notice of Proposed Rulemaking, FCC 08-22 (rel. Jan. 29, 2008).

² *Federal-State Joint Board on Universal Service*, Recommended Decision, 22 FCC Rcd 8998 (Fed.-State Jt. Bd. 2007) (*Recommended Decision*).

³ *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Notice of Proposed Rulemaking, FCC 08-4 (rel. Jan. 29, 2008) (*Identical Support Rulemaking NPRM*).

Recommended Decision does not provide “explicit and sufficient” USF support for rural landline CETCs as required by the Communications Act (“Act”), it will have a negative and detrimental impact on the quality of service and the state of local competition in rural areas. If implemented, the *Recommended Decision* and the tentative conclusions advanced by the Commission in the *Identical Support Rulemaking NPRM* would unreasonably discriminate against landline CETCs by tilting the competitive landscape in favor of ILECs, thus abrogating the Commission’s obligation to ensure that changes necessary to the USF program do not adversely affect local competition.

I. DISCUSSION

A. Rural CLECs, Such as Nex-Tech, Provide a Valuable and Needed Alternative to ILECs

Nex-Tech is both a competitive local exchange carrier (“CLEC”) and a CETC providing landline services in rural Northwest Kansas. Nex-Tech is a subsidiary of Rural Telephone Service Company, Inc., a local exchange carrier that has been providing local telephone service in Kansas since 1951. Nex-Tech is designated as a CETC in areas of Kansas for purposes of receiving both federal and state USF support.

As an active and vigorous competitor in the rural Kansas telecommunications marketplace, Nex-Tech has brought advanced telecommunications and other services to underserved rural areas that, until Nex-Tech’s entrance into the market, did not have access to such services. Nex-Tech serves customers who endured poor service due to aging and outdated infrastructure and insufficiently allocated resources as a result of the ILEC’s lack of commitment to providing high quality service in rural areas. Nex-Tech made significant capital expenditures to overbuild the infrastructure in order to provide the level of service Nex-Tech customers have come to know and trust. As a result, Nex-Tech achieves high customer satisfaction and service

ratings from its subscribers and customers in adjacent locations are eager to have Nex-Tech provide them with service.

Nex-Tech has made great strides in its commitment to provide advanced telecommunications services to rural Kansans who were previously “left behind” by large ILECs. Nex-Tech now serves a larger percentage of the population than the ILEC in certain locations, such as Norton, Kansas. The introduction of competition by Nex-Tech has not only improved the quality of telecommunications and other advanced services in rural Kansas, it has also stimulated the local economy through the creation of employment opportunities and new businesses, which expands the tax base local governments rely on for revenues to provide public services. The availability of broadband and advanced telecommunications services has enabled local businesses to expand their advertising and e-commerce efforts and has attracted new industries to rural areas.

By way of example, Natoma Corporation (“Natoma”), headquartered in Norton, Kansas, is a machine shop that manufactures precision parts for several different industries located all over the United States. Broadband Internet service was unavailable in Norton prior to Nex-Tech entering the market and Natoma spent significant time tracking packages by phone and downloading orders using dial-up Internet access. In addition, Natoma had to call a service technician each time there were programming or mechanical problems with its machinery, and it could take up to a week for a service technician to be dispatched on-site.

Broadband Internet service has proven invaluable to Natoma in many ways. First and foremost, productivity and efficiency have dramatically improved. By tracking packages online and downloading orders using broadband Internet, Natoma saves in excess of 1,200 work hours per year. Plus, key executives now have the opportunity to work from home through a virtual

private network. Second, downtime has been drastically reduced because Natoma can troubleshoot most technical problems online by downloading instructions from a technician. And last, but certainly not least, broadband Internet service has allowed Natoma to attract new customers, promote its manufacturing expertise, advertise job openings, post quality manuals for potential customers to view, and publicize its contact information 24 hours a day, seven days a week, to anyone across the world through its website. It is important to note that the ILEC did not offer broadband services in Norton, Kansas, until 2004 and only after ordered to do so by the Kansas Corporation Commission (“KCC”).

It is Nex-Tech’s experience that ILECs defined as non-rural carriers in the Act are generally not interested in providing advanced telecommunications services in small rural towns. They will only do so begrudgingly if they are required to provide advanced services, such as broadband Internet access, by the applicable state public service commission or if they are faced with a competitor with the appropriate resources to provide better and higher quality service than the ILEC. For example, in 2004, the KCC issued an order approving a stipulation and agreement in which AT&T agreed to provide DSL broadband Internet service to rural communities with more than 1,000 access lines.⁴ However, the KCC’s order did not address the issue of DSL broadband Internet service to small rural towns with less than 1,000 access lines.

These are the types of communities Nex-Tech would like to serve but cannot, because the return on investment required to serve sparsely populated areas cannot support a business case for Nex-Tech to provide service, and the duplicate support cap imposed on the receipt of USF by CETCs (i.e., CETCs cannot receive more USF than the ILEC) does not allow for sufficient support to compensate for this shortcoming. Below is a sample list of small Kansas rural towns

⁴ *In re An Investigation into Southwestern Bell Telephone Company’s Cost to Provide Local Service, as Required by K.S.A. 1996 Supp. 66-2008(d)*, Order Approving Stipulation and Agreement, KCC Docket No. 98-SWBT-667-GIT (2004).

that do not have access to DSL broadband Internet service through their ILEC. Nex-Tech is unable to serve these towns because the USF mechanism does not provide sufficient support to enable Nex-Tech to upgrade or build appropriate facilities to provide advanced telecommunications services:

<u>Town</u>	<u>Population</u>	<u>Town</u>	<u>Population</u>
Clayton	66	Herndon	149
Dresden	51	Kirwin	229
Glade	114	Norcatur	169

In addition to these communities, Nex-Tech has received multiple requests from other rural communities—including Atwood (pop. 1,279), Hoxie (pop. 1,244), Oberlin (pop. 1,994) and St. Francis (pop. 1,497)—asking that Nex-Tech introduce services because they have been neglected by the ILEC. Although Nex-Tech would like to replicate its success in Norton and other underserved rural areas by bringing high quality, advanced services, the current USF system does not provide sufficient support to enable rural landline CETCs like Nex-Tech to expand service to extremely low density or sparsely populated areas. The Joint-Board noted that “[u]nder existing support mechanisms, [rural LECs (“RLECs”)] have done a commendable job of providing voice and broadband services to their subscribers.”⁵

The FCC’s duplicate support cap on USF support has relegated people living in these low density, sparsely populated areas to a telecommunications wasteland because rural landline CETCs are unable to enter these markets due to insufficient USF support. Nex-Tech’s proposal to provide rural landline CETCs with cost-based USF support would ensure that the reforms proposed by the Commission and the Joint Board would provide a competitive and level playing field, and provide sufficient cost-based USF support in extremely low density or sparsely populated areas. As further detailed below, rural landline CETCs have the same service

⁵ *Id.* at ¶ 39.

obligations, similar network infrastructures, and incur similar, if not greater, costs as ILECs. Therefore, the Commission should allow landline CETCs to participate in the POLR Fund to the same extent as ILECs, and provide landline CETCs with cost-based USF support.

B. Landline CETCs Have the Same POLR Obligations as ILECs

The *Recommended Decision* proposes that USF support be provided to ILECs through the POLR Fund, without proposing similar support for rural landline CETCs. As further detailed in Section II below, Nex-Tech proposes that the POLR Fund be re-designated as the Landline Fund. Additionally, Nex-Tech proposes that the Commission provide cost-based support through this Landline Fund to rural CLECs designated as landline CETCs because ILECs and landline CETCs have substantially similar service obligations, network infrastructures and costs.

The availability of cost-based USF support would allow Nex-Tech to receive USF support for the same types of landline facilities ILECs receive support for, thus allowing Nex-Tech to more effectively compete with ILECs by leveling the competitive playing field. Rural landline CETCs, such as Nex-Tech, have the same POLR obligations as ILECs, and the disparate treatment of ILECs and landline CETCs by excluding landline CETCs from the POLR Fund would therefore be patently unfair and unwarranted.

CLECs like Nex-Tech are obligated to provide service to the entire area in which they are designated as a landline CETC. Specifically, Section 214 of the Act provides that:

A common carrier designated as an eligible telecommunications carrier...shall be eligible to receive universal service support in accordance with section 254 and shall, *throughout the service area for which the designation is received* – (A) *offer the services that are supported by Federal universal service support mechanisms* under section 254(c)...⁶

⁶ 47 U.S.C. § 214(e)(1)(A) (emphasis added).

Pursuant to landline CETC obligations, CLECs must provide service to the public upon request. They cannot pick and choose their customers.

Section 214(e)(4) of the Act permits an ILEC to relinquish its designation as an ETC in an area served by more than one ETC.⁷ In such a situation, the remaining landline CETCs are required to provide service to all customers formerly served by the relinquishing ILEC.⁸ The obligation of landline CETCs to serve all customers is a federal statutory requirement, and it is the same as the POLR requirement for ILECs. Indeed, the state commission of Oklahoma has determined that landline CETCs' obligations to provide service throughout their designated areas are the same as the ILECs' POLR obligations, and has required landline CETCs to accept POLR responsibilities.⁹ Thus, the exclusion of landline CETCs from the POLR Fund is arbitrary and unfair given that landline CETCs have the same obligations as ILECs to provide service throughout their designated service areas.

C. The Recommended Decision Does Not Provide Explicit and Sufficient USF Support to CETCs or Advance Local Competition as Required by the Act

As the Commission is aware, the Act requires that universal service support be "explicit and sufficient."¹⁰ Moreover, such support must be provided so that, among other things, access is provided in all regions of the nation, including to low-income consumers and those in rural, insular, and high-cost areas; services and rates are reasonably comparable to those offered in

⁷ 47 U.S.C. § 214(e)(4).

⁸ *Id.*

⁹ See, e.g., *Application of Oklahoma Western Telephone Company d/b/a OWTC Cellular*, Cause No. PUD 200700053, Order No. 538565, Oklahoma Corporation Commission, 2007 Okla. PUC LEXIS 110 (rel. April 27, 2007) (designating applicant as an ETC, and requiring applicant to accept carrier of last resort obligations as a condition of such designation); *In re Dobson Cellular Systems, Inc. and American Cellular Corporation*, Cause No. PUD 200500122, Order No. 534334, Oklahoma Corporation Commission, 2007 Okla. PUC LEXIS 19 (rel. Jan. 18, 2007) (same); *Application of FamilyTel of Oklahoma, LLC*, Cause No. PUD 200600121; Order No. 531441, Oklahoma Corporation Commission, 2006 Okla. PUC LEXIS 199 (rel. Oct. 27, 2006) (same).

¹⁰ 47 C.F.R. § 254(e).

urban areas; and USF support is specific and predictable.¹¹ However, any changes to the USF mechanism must be consistent with Congress's intent that competition be fostered in the telecommunications marketplace. Specifically:

Alongside the universal service mandate is the directive that local telephone markets be opened to competition...The FCC must see to it that *both* universal service and local competition are realized; one cannot be sacrificed in favor of the other. The Commission therefore is responsible for making the changes necessary to its universal service program to ensure that it survives in the new world of competition.¹²

With this precept in mind, it is important that any USF reforms adopted by the Commission not only provide "explicit and sufficient" USF support to CLECs, but that such reforms do not harm competition by discriminating against certain classes of providers, and in particular, landline CETCs. The Joint Board's recommendation as set forth in the *Recommended Decision* proposed three distinct funds, i.e., the Broadband Fund, the Mobility Fund, and the POLR Fund, each with separate distribution mechanisms and separate funding allocations.¹³

As explained in the *Recommended Decision*, the Broadband Fund would be distributed for the primary purpose of bringing broadband Internet services to unserved areas. Its secondary purpose would be to provide grants for new construction to enhance broadband service in areas with substandard service, and to provide continuing operating support to broadband Internet providers in low customer-density areas.¹⁴ The Mobility Fund would primarily provide support to wireless voice service providers to construct facilities in unserved areas. It would also have as a secondary purpose of continuing operating support for carriers serving areas where service is essential, but where low usage would not support a plausible economic cause to support

¹¹ 47 C.F.R. § 254(b).

¹² *Alenco Communications, Inc. v. FCC*, 201 F.3d 608, 615 (5th Cir. 2000) (emphasis original).

¹³ *Recommended Decision* at ¶ 11.

¹⁴ *Id.* at ¶ 12.

construction or ongoing operations.¹⁵ The POLR Fund would “be comprised of the sum of all existing Incumbent LEC support mechanism.”¹⁶

Although the Joint-Board has recommended a transition period from the current system to the proposed three-fund system, conspicuously absent from the Joint-Board’s *Recommended Decision* is the provision of long-term USF support to landline CETCs. Indeed, the Joint-Board’s *Recommended Decision* appears to contemplate the elimination of USF support for voice services provided by landline CETCs like Nex-Tech. In particular, the Joint-Board recognized that permitting only ILECs to participate in the POLR Fund would “eventually exclude existing CETCs, some of whom are wireline CETCs,” though the Joint-Board did recommend that the “Commission examine the possibility of continuing support to these entities (both wireline and wireless CETCs) during the transition period.”¹⁷ However, it is important to note that although both landline (wireline) and wireless CETCs are currently excluded from participating in the POLR Fund, only wireless CETCs are provided with post-transition USF support by way of the Mobility Fund. No comparable dedicated fund is proposed for landline CETCs in the *Recommended Decision*. Such disparate treatment for similarly situated carriers does not meet the requirement set forth by Congress in the Act to ensure that the USF support mechanism does not adversely impact competition by disadvantaging landline CETCs.

The Joint-Board’s recommendation to only provide interim transitional USF support to landline CETCs is insufficient, and a long-term solution is vital. Under the *Recommended Decision*, wireless CETCs will be able to receive USF support from the Mobility Fund. While landline CETCs may be able to receive some support from the Broadband Fund, landline CETCs

¹⁵ *Id.* at ¶ 16.

¹⁶ *Id.* at ¶ 19.

¹⁷ *Recommended Decision* at ¶ 19.

do not extend their networks primarily for the purpose of providing broadband services. Rather, voice service is the primary factor driving landline CETCs to build into new areas, with broadband services being ancillary services that provide landline CETCs with a competitive advantage over the ILEC.

There is no rational justification for allowing ILECs and wireless CETCs to continue to receive full USF support through the POLR and Mobility Funds, while restricting landline CETCs to receiving limited support from the Broadband Fund for high-speed Internet access. Like ILECs and wireless CETCs, landline CETCs have significant infrastructure costs related to the construction and operation of their networks. The *Recommended Decision* clearly discriminates against landline CETCs in favor of competing ILECs and wireless CETCs. The Fifth Circuit in *Alenco* cautioned the Commission against making changes to the USF that would negatively impact the competitive landscape,¹⁸ and the three-fund proposal benefitting wireless CETCs and ILECs, without providing comparable support to landline CETCs, would do just that.

Moreover, it would be arbitrary and capricious for the Commission to provide USF support to ILECs through the POLR Fund, and not provide the same support categories to landline CETCs. In the FCC's *CLEC Access Reform Order*,¹⁹ the Commission revised its tariff rules to align tariffed CLEC access rates more closely with those of the ILECs.²⁰ The Commission established a declining benchmark rate for CLEC access rates, and concluded that CLEC access rates at or below the benchmark would be presumed just and reasonable.²¹ Access charges and revenues are generally declining in rural areas, and without sufficient USF

¹⁸ *Alenco*, 201 F.3d at 615.

¹⁹ See *Access Charge Reform, Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, Seventh Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 9923 (2001) ("*CLEC Access Reform Order*").

²⁰ 47 C.F.R. § 61.26.

²¹ *CLEC Access Reform Order*, 16 FCC Rcd at 9925, ¶ 3.

support, small rural landline CETCs will face even further challenges to provide service in high-cost areas.

In the communities it overbuilds, Nex-Tech provides telecommunications service through its own facilities, without reliance on the ILEC. There is no reason or rational basis for the Commission to discriminate against rural landline CETCs like Nex-Tech, or to provide an unfair competitive advantage to ILECs by excluding their similarly situated landline competitors from the POLR Fund. There is also no justification for discriminating against Nex-Tech on the basis of carrier of last resort obligations, as Nex-Tech serves a larger percentage of the access lines than the ILEC in some communities, and is obligated by Section 214 of the Act to offer universal service to all individuals throughout its entire service area.

Landline CETCs provide valuable and necessary services to rural areas, and the reform measures proposed in the *Recommended Decision* and the *Identical Support Rulemaking NPRM* will have a detrimental impact on competition. Nex-Tech urges the Commission to provide IAS, ICLS, and LSS to wireline CLECs in order to advance the goals of the Act to provide universal service throughout the country and to foster local competition. Those amounts would be in addition to high-cost loop support (HCLS), which the FCC has determined CETCs should receive to the extent their loop-equivalent costs can be shown to be high-cost.²² Nex-Tech also urges the Commission to adopt additional USF reform measures as further proposed below, including the designation of a more inclusive Landline Fund, rather than the proposed POLR Fund, to provide explicit and sufficient cost-based support to all landline CETCs, thus avoiding arbitrary discrimination that would be contrary to the requirement that the Commission advance the goals of local competition, as set forth in the Act.

²² *Identical Support Rulemaking NPRM* at ¶ 24.

II. NEX-TECH USF REFORM PROPOSAL

The Joint-Board's three-fund USF reform approach discriminates against landline CETCs in denying them the "explicit and sufficient" funding they need to advance the Act's universal service goals. The Joint-Board's *Recommended Decision* also imposes an unfair competitive disadvantage on landline CETCs because competing ILECs would receive USF support to recover costs that landline CETCs would not recover, even though both entities incur similar costs and have similar types of plant and infrastructure. Panhandle Telecommunication Systems, Inc. ("Panhandle") has submitted a proposal to the FCC that seeks to address those issues.²³ Specifically, Panhandle proposes that the Commission provide USF support to both wireless and landline CETCs pursuant to certain criteria and conditions. Nex-Tech does not express any opinion as to Panhandle's wireless CETC proposal, as Nex-Tech is primarily concerned with USF support for landline CETCs. Nex-Tech generally supports Panhandle's approach for landline CETCs, but with several key modifications.

With regard to its landline CETC proposal, Panhandle recommends that landline CETCs receiving high-cost support be required to perform a cost study identical to that required of rate-of-return ILECs. Panhandle states that high-cost support received by a landline CETC should be based on actual cost, not the identical support rule. Nex-Tech agrees with this proposal and encourages the Commission to take the same approach for wireless CETCs. Requiring all CETCs to justify their costs, regardless of the technology used, will ensure they are not receiving a windfall from the USF. Nex-Tech does not, however, support a cap on costs for landline CETCs, as a landline CETC's costs will generally be greater than those of the ILEC due to lack of economies of scale.

²³ *Notice of Ex Parte Presentation of Panhandle Telecommunications Systems, Inc.*, CC Docket No. 96-45 (filed Jan. 11, 2008).

Nex-Tech also encourages the Commission to provide IAS, ICLS, and LSS support, in addition to HCLS, to landline CETCs based on their actual costs. Landline CETCs incur similar, if not greater, costs as ILECs due to the similar network infrastructure. Therefore, the same methodology used to calculate IAS, ICLS, and LSS for ILECs should apply to landline CETCs. Applying the same regulatory scheme to landline CETCs and ILECs for landline USF support, such as Parts 32, 36, and 64 of the Commission's rules, will ensure such support is explicit and sufficient as required by the Act. It will also ensure the competitive landscape is not skewed in favor of ILECs as a result of their receipt of support not available to similarly situated carriers with whom they compete.

Nex-Tech further urges the Commission to allow landline CETCs to receive support from the POLR Fund to the same extent as ILECs, and that the POLR Fund be re-designated as the Landline Fund. Separate funds are by definition discriminatory and not equal because ILECs and landline CETCs are similarly situated.²⁴ The calculation of USF disbursements to ILECs and landline CETCs from the POLR Fund based on actual costs would be a fair method that would ensure neither ILECs nor CLECs have access to better or more support than the other, thus ensuring a level playing field for all parties. Including all landline LECs, both competitor and incumbent, in the POLR Fund (re-designated as the Landline Fund) would ensure equal treatment for similarly situated carriers, and would reduce the administrative burden of managing separate funds. The exclusion of landline CETCs from the USF support mechanism not only contravenes Congress's directive to provide explicit and sufficient support to advance the goals

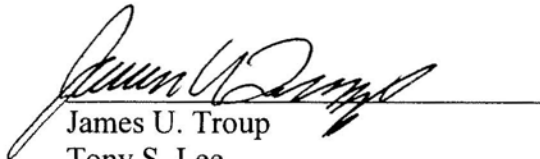
²⁴ See, e.g., *Air Transp. Ass'n v. Dep't of Trans.*, 119 F.3d 38, 41-44 (D.C. Cir. 1997) (agency disparate treatment of different categories of airport fees deemed arbitrary and capricious); *Syngenta Crop Prot., Inc. v. United States EPA*, 444 F. Supp. 2d 435, 448 (D.N.C. 2006) (plaintiff could bring claims that EPA unequally applied facially neutral legislation because it alleged that that it had been treated differently than others similarly situated, and the unequal treatment by the agency was the result of intentional or purposeful discrimination).

of universal service, it undermines the requirement that vigorous and real competition be achieved in the local telecommunications marketplace.

III. CONCLUSION

Nex-Tech urges the Commission to provide explicit and sufficient USF support to landline CETCs by requiring all CETCs to calculate their actual costs, and to permit landline CETCs to participate in the POLR Fund by way of the re-designated Landline Fund. Such an approach would ensure that the Commission advances the goals of universal service without arbitrarily discriminating against landline CETCs that utilize similar network structures and incur similar, if not greater, costs as the ILECs against whom they compete. It would also satisfy Congress's mandate that local competition be encouraged by providing landline CETCs with support in the same manner as competing ILECs. Furthermore, it would ensure that local competition in rural America is not negatively impacted by providing ILECs with an unfair advantage over landline CETCs through ILEC-only USF support.

Respectfully submitted,



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